



# Mississippi Workers' Compensation Commission

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## Health Insurance Portability & Accountability Act (HIPAA) and Workers' Compensation

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Congress enacted the Health Insurance Portability & Accountability Act (HIPAA) in part to enhance the security and privacy of health records used and disclosed by health care providers, health plans and health care clearinghouses. An individual's health care records represent protected health information (PHI), the disclosure of which is closely regulated by HIPAA. This bulletin attempts to clarify the scope of HIPAA in workers' compensation matters, and is being published for the benefit of health care providers, employers, workers' compensation payers, workers' compensation benefit administrators, and other entities or persons involved in workers' compensation claims. ***IMPORTANTLY, this bulletin provides only general information and is not intended as legal advice concerning specific questions or issues. If you have specific concerns or questions about HIPAA compliance, please consult an independent legal representative.***

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HIPAA makes important exceptions concerning the disclosure of PHI for workers' compensation purposes. The United States Department of Health and Human Services, through its Office for Civil Rights, provides the following information concerning these exceptions:

OCR HIPAA Privacy  
December 3, 2002  
Revised April 3, 2003

### DISCLOSURES FOR WORKERS' COMPENSATION PURPOSES

[45 CFR 164.512(l)]

#### Background

The HIPAA Privacy Rule does not apply to entities that are either workers' compensation insurers, workers' compensation administrative agencies, or employers, except to the extent they may otherwise be covered entities. However, these entities need access to the health information of individuals who are injured on the job or who have a work-related illness to process or adjudicate claims, or to coordinate care under workers' compensation systems. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by the Privacy Rule. The Privacy Rule recognizes the legitimate need of insurers and other entities involved in the workers' compensation systems to have access to individuals' health information as authorized by State or other law. Due to the significant variability among such laws, the Privacy Rule permits disclosures of health information for workers' compensation purposes in a number of different ways.

## **How the Rule Works**

Disclosures Without Individual Authorization. The Privacy Rule permits covered entities to disclose protected health information to workers' compensation insurers, State administrators, employers, and other persons or entities involved in workers' compensation systems, without the individual's authorization:

- C As authorized by and to the extent necessary to comply with laws relating to workers' compensation or similar programs established by law that provide benefits for work-related injuries or illness without regard to fault. This includes programs established by the Black Lung Benefits Act, the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act. See 45 CFR 164.512(l).
- C To the extent the disclosure is required by State or other law. The disclosure must comply with and be limited to what the law requires. See 45 CFR 164.512(a).
- C For purposes of obtaining payment for any health care provided to the injured or ill worker. See 45 CFR 164.502(a)(1)(ii) and the definition of "payment" at 45 CFR 164.501.

Disclosures With Individual Authorization. In addition, covered entities may disclose protected health information to workers' compensation insurers and others involved in workers' compensation systems where the individual has provided his or her authorization for the release of the information to the entity. The authorization must contain the elements and otherwise meet the requirements specified at 45 CFR 164.508.

Minimum Necessary. Covered entities are required reasonably to limit the amount of protected health information disclosed under 45 CFR 164.512(l) to the minimum necessary to accomplish the workers' compensation purpose. Under this requirement, protected health information may be shared for such purposes to the full extent authorized by State or other law.

In addition, covered entities are required reasonably to limit the amount of protected health information disclosed for payment purposes to the minimum necessary. Covered entities are permitted to disclose the amount and types of protected health information that are necessary to obtain payment for health care provided to an injured or ill worker.

Where a covered entity routinely makes disclosures for workers' compensation purposes under 45 CFR 164.512(l) or for payment purposes, the covered entity may develop standard protocols as part of its minimum necessary policies and procedures that address the type and amount of protected health information to be disclosed for such purposes.

Where protected health information is requested by a State workers' compensation or other public official, covered entities are permitted to reasonably rely on the official's representations that the information requested is the minimum necessary for the intended purpose. See 45 CFR 164.514(d)(3)(iii)(A).

Covered entities are not required to make a minimum necessary determination when disclosing protected health information as required by State or other law, or pursuant to the individual's authorization. See 45 CFR 164.502(b).

The Department will actively monitor the effects of the Privacy Rule, and in particular, the minimum necessary standard, on the workers' compensation systems and consider proposing modifications, where appropriate, to ensure that the Rule does not have any unintended negative effects that disturb these systems.

Refer to the fact sheet and frequently asked questions on this web site about the minimum necessary standard, or to 45 CFR 164.502(b) and 164.514(d), for more information.

To see Privacy Rule FAQ's, click the desired link below:

**[FAQs on Workers' Compensation Disclosures](#)**

[go to [http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std\\_alp.php](http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std_alp.php), then select "Privacy of Health Information/HIPAA" from the Category drop down list, and select "Workers' Compensation Disclosures" from the sub-category drop down list, and click the search button.]

**[FAQs on ALL Privacy Rule Topics](#)**

[go to [http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std\\_alp.php](http://answers.hhs.gov/cgi-bin/hhs.cfg/php/enduser/std_alp.php), then select "Privacy of Health Information/HIPAA" from the Category drop down list, and click the search button.]

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When considering HIPAA compliance in connection with workers' compensation matters, please be aware of the following Mississippi State laws and rules governing the disclosure of medical records:

". . . no claim for medical or surgical treatment shall be valid and enforceable, as against such employer, unless within twenty (20) days following the first treatment the physician or provider giving such treatment shall furnish to the employer, if self-insured, or its carrier, a preliminary report of such injury and treatment, on a form or in a format approved by the commission. Subsequent reports of such injury and treatment must be submitted at least every thirty (30) days thereafter until such time as a final report shall have been made. Reports which are required to be filed hereunder shall be furnished by the medical provider to the employer or carrier, and it shall be the responsibility of the employer or carrier receiving such reports to promptly furnish copies to the commission." ***Miss. Code Ann. §71-3-15(1) (Rev. 2000)***

"Medical and surgical treatment as provided [under the Workers' Compensation Law] shall not be deemed to be privileged insofar as carrying out the provisions of [the Workers' Compensation Law] is concerned." ***Miss. Code Ann. §71-3-15(6) (Rev. 2000)***

"Medical reports must be furnished by all treating or examining physicians to the Commission and the employer or carrier within twenty (20) days of the first treatment and periodically thereafter on a form prescribed by the Commission to which there may be attached office notes or narrative reports. (The HCFA 1500 form will be accepted in lieu of the Commission Forms B-9 and B-27, provided appropriate office/progress notes are attached). The failure to furnish such reports may result in the claim for medical and surgical treatment being unenforceable against the employer unless excused by the Commission or Administrative Judge." ***M.W.C.C. General Rule 9.***

"The attending physician must file the CMS-1500 [formerly HCFA 1500] form and appropriate documentation within 20 days of rendering services on a newly diagnosed work-related injury or illness. Subsequent billings must be submitted every 30 days with the appropriate medical records to substantiate the medical necessity for continued services." ***Mississippi Workers' Compensation Medical Fee Schedule, Medical Cost Containment Rules III.A.4.***

"Failure to submit necessary or adequate documentation to support the services rendered may result in the services being disallowed." ***Mississippi Workers' Compensation Medical Fee Schedule, General Guidelines II.D.***

"Health care providers must submit copies of records and reports to payers upon request."

*Mississippi Workers' Compensation Medical Fee Schedule, General Guidelines IV.B.*

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For internet access to the OCR HIPAA Privacy document related to workers' compensation, try the following links:

<http://www.hhs.gov/ocr/hipaa/guidelines/workerscompensation.rtf> (RTF format)

<http://www.hhs.gov/ocr/hipaa/guidelines/workerscompensation.wpd> (WP format)

<http://www.hhs.gov/ocr/hipaa/guidelines/workerscompensation.pdf> (PDF format)

Other helpful information concerning HIPAA can be found on the web site maintained by the United States Department of Health and Human Services at <http://www.hhs.gov/ocr/hipaa/>.

**June 10, 2003**